

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SF1379
)	EEOC NO.: 21BA90358
RACHEL POLLARD)	ALS NO.: 10-0074
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Rachel Pollard's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009SF1379; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On November 5, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Peoria Housing Authority ("PHA") failed to promote her because of her race, Black (Count A) and in retaliation for having filed two previous charges of discrimination against PHA (Count B), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On December 22, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 24, 2010, the Petitioner filed a timely Request.
2. The Petitioner was first hired by the PHA in July 1998 as a Work Order Clerk. The Petitioner was subsequently promoted in 2003, 2005, 2008. In 2008, the Petitioner was promoted to the position of Assistant Asset Manager.
3. In 2000, the Petitioner filed two (2) charges of discrimination with the Respondent against the PHA, under charge numbers 2000SF0389 and 2001SF0318.
4. In July 2008, the Petitioner applied for the position of Scattered Site Asset Manager.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

5. The Petitioner did not receive the promotion. A Caucasian applicant was hired for the position.
6. The PHA stated it did not promote the Petitioner because the Caucasian applicant was more qualified than the Petitioner. The PHA stated the Petitioner lacked the requisite five (5) years of management, supervisory, and administrative experience, and that she lacked experience working with HUD tax credits. The Caucasian applicant possessed more than 20 years of property management experience, including management of tax credit properties and bookkeeping.
7. In her charge, the Petitioner alleged she was not promoted in July 2008 because of her race, and in retaliation for having filed discrimination charges against the PHA in 2000.
8. In her Request, the Petitioner argues that the Respondent's investigator did not conduct a fair and reasonable hearing, that the investigator displayed bias against the Petitioner, and that there were inaccuracies in the Respondent's investigative report.
9. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent states that the PHA articulated a non-discriminatory reason for not promoting the Petitioner and there was no substantial evidence of pretext. The Respondent argues the Petitioner failed to establish a *prima facie* case of retaliation because there was no substantial evidence of a causal connection between the two charges of discrimination filed in 2000 and the alleged adverse action in July 2008.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, the Commission finds no substantial evidence the PHA failed to promote the Petitioner because of her race. In this case, the only evidence the Petitioner has of discriminatory treatment is the fact that the Employer hired a person outside the Petitioner's protected category. The Employer stated that it hired the successful candidate due to her superior qualifications. Therefore, in order to show pretext, there must be evidence that the Petitioner's qualifications were so superior to the successful candidate's that the Employer's articulated reason must be pretextual. See Kindred v. Human Rights Comm'n, 180 Ill. App. 3d 766, 536 N.E.2d 447, 129 Ill. Dec. 607 (1989). There must be

some evidence that the Petitioner's skills were clearly superior to those of the Caucasian candidate, and that no reasonable employer could have thought otherwise. See Townsell and Illinois Dep't of Labor, 43 Ill. HRC Rep. 185, 191-2 (1988).

The Petitioner failed to meet this standard. The job description for the Scattered Site Asset Manager required five years of management, supervisory and administrative experience, as well as experience working with HUD tax credits. The Caucasian candidate selected for the position had more than twenty years of property management experience, including management of tax credit properties and bookkeeping. The Petitioner did not have the requisite five (5) years of management, supervisory, or administrative experience, nor did she have experience working with HUD tax credits. As such, the Petitioner did not show that her qualifications were so superior to the successful candidate's that the Employer's articulated reason for not promoting the Petitioner was pretextual.

As to Count B, the Commission concludes that the Petitioner failed to establish a *prima facie* case of retaliation. Generally, to establish a *prima facie* case of retaliation, the Petitioner must establish that 1) she engaged in a protected activity, 2) the PHA took an adverse action against her, and 3) there was a causal nexus between the protected activity and PHA's adverse action. See Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-11 (1985) (six months was too remote to establish connectedness); Lynell Mims and State of Illinois, Illinois Department of Lottery, Charge No. 1989CF1141, 1998 WL 937898 (December 17, 1998) (nineteen-month time period between protected activity and adverse action to long to create an inference of retaliation).

The Petitioner failed to establish the third element of her *prima facie* case. The Petitioner engaged in a protected activity approximately eight (8) years prior to the alleged adverse action. Eight years is too great a time period from which to infer the existence of causal nexus between the protected activity and the alleged adverse act. Further, after the Petitioner had engaged in the protected activity in 2000, the Employer promoted the Petitioner three (3) times, in 2003, 2005, and 2008.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

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HUMAN RIGHTS COMMISSION

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In the Matter of the Request for Review by: Rachel Pollard

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Peoria Housing Authority, Incorporated, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 22nd day of September 2010

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini